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Attorneys for Plaintiffs  
GIORGIO GOMELSKY  
and all others similarly situated

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

GIORGIO GOMELSKY,  
On behalf of himself and  
all others similarly situated

Plaintiffs,

v.

APPLE INC.,

Defendants.

Case No. C-08-04969 JF

**STIPULATION AND PROPOSED  
ORDER**

Pursuant to Federal Rule of Civil Procedure 15 and Civil Local Rules 7-7(a)(1) and 7-12, the parties, by and through their respective counsel, hereby stipulate as follows:

WHEREAS, Plaintiff filed the complaint in the above-captioned matter on October 30, 2008;

WHEREAS, Defendant filed its Motion to Dismiss and to Strike (the "Motion") on December 22, 2009;

1 WHEREAS, the Motion is currently noticed for hearing on March 6, 2009, and no  
2 opposition to the Motion has been filed;

3 WHEREAS, the Plaintiff has given careful consideration to the arguments raised in  
4 the Motion and has determined that filing an amended complaint would conserve judicial  
5 resources as well as the resources of the parties;

6 WHEREAS, there have been no previous amendments to the complaint and no  
7 responsive pleading has been served;

8 WHEREAS, the Plaintiff has advised Defendant of his intention to file an amended  
9 complaint narrowing the claims asserted and substituting and/or adding named plaintiffs;

10 WHEREAS, Defendant has agreed that, in light of the foregoing, the hearing on the  
11 Motion should be continued until after Defendant has had the opportunity to evaluate the  
12 amended complaint;

13 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

14 1. Plaintiff shall file an amended complaint within thirty (30) days of the date of  
15 this Stipulation;

16 2. The March 6, 2009 hearing date on the Motion shall be adjourned; and

17 3. Within thirty (30) days following the filing of the amended complaint,  
18 Defendant will advise the Court whether it intends to move to dismiss the amended  
19 complaint, or to answer the amended complaint in which case the Motion will be  
20 withdrawn.

21 Dated: January 29, 2009

Caldwell Leslie & Proctor, PC

22  
23 By: /s/ Robyn C. Crowther  
Robyn C. Crowther  
24 Attorneys for Plaintiff

25 Dated: January 29, 2009

Morrison & Foerster LLP


26  
27 By: /s/ Andrew D. Muhlbach  
Andrew D. Muhlbach  
28 Attorneys for Defendant

1  
2 *Filer's Attestation:* Pursuant to General Order No. 45.1, I, Robyn C. Crowther attest that I  
3 obtained concurrence in the filing of this document from the other signatories.

4 **PROPOSED ORDER**

5 PURSUANT TO STIPULATION, IT IS SO ORDERED.

6 Dated: January 30, 2009

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8   
9 The Honorable Jeremy Fogel  
United States District Judge